

OPIC Programs Supporting United States Investment in Eastern Europe

I intend to give you a very quick thumbnail sketch of the Overseas Private Investment Corporation (OPIC) and its programs, with emphasis on how these programs can be used to support, protect and encourage United States investment in two Eastern European countries in which OPIC is authorized to operate—Yugoslavia and Romania.

I might say that the same restriction in the Trade Act that applies to the Eximbank programs in Romania also applies to OPIC's programs, and therefore we are awaiting, as the Eximbank is awaiting, an assurance that the Congress is going to approve the Trade Agreement with Romania.

OPIC is a United States government corporation located in Washington with a staff of 120 and an eleven-man Board of Directors. Six of the eleven board members come from the private sector and five are from the government. OPIC is about four years old, but its principal program, the insurance against political risks in developing countries, goes back to the late 1940s when it was part of the Marshall Plan. OPIC's purpose, as stated in its legislation, is to mobilize and facilitate the participation of private United States capital and skills in the economic development of less-developed countries.

OPIC attempts to fulfill its purpose through the operation of three basic programs. The first is the Political Risk Insurance Program, which covers three risks: the inconvertibility of local currency received as earnings or return of capital from an approved project, loss of investment due to expropriation or confiscation, and loss due to war, revolution or insurrection.

The second program is the Finance Program, which is not as well known as the Insurance Program. It consists of dollar or local currency loans, either supplied through OPIC's own resources or from a lending institution in the United States which is protected from loss by an OPIC guarantee. The guarantee portion of this program is substantially larger than the direct loans. In fact, we can have outstanding at any one time up to \$750 million worth of guarantees of private loans.

The third program is a Pre-investment Assistance Program, which provides financial participation in investment surveys or feasibility studies.

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The OPIC programs have historically operated as a part of the Foreign Assistance Program of the United States, and therefore many of the eligible countries for OPIC programs are also the countries which do now or have received foreign aid from the United States. Also, like AID, we are prevented from operating in certain countries (e.g., "communist countries") because of laws enacted by the Congress. Therefore, in order to operate in Yugoslavia and Romania it was necessary to have an amendment to our authorizing legislation. The amendment provided that if the President determined that it was in the national interest for OPIC to operate in Yugoslavia and Romania, OPIC could offer its insurance and finance services to United States investors there. The amendment was necessary because of the prohibition in the Foreign Assistance Act against "assistance" to Communist countries. The President made the required determination in 1972.

Soon after the enactment of this amendment, OPIC began negotiations with both Yugoslavia and Romania in order to obtain an agreement for the institution of its programs. The agreement with Yugoslavia was signed in January 1973 and with Romania on April 23, 1973.

Regarding OPIC's specific activities in Yugoslavia and Romania, our operations reflect the apparent difference in the degree of current interest by United States firms. We have written nine insurance contracts in Yugoslavia covering \$29 million in investments, whereas we have not yet issued our first insurance contract in Romania. There are three applications for insurance in Romania. The projects are currently being negotiated, but it is not clear when they will be concluded. There are thirteen other firms in addition to the nine that have insurance that are currently negotiating joint ventures in Yugoslavia. These thirteen firms have applied for OPIC insurance.

After studying the laws of both countries, particularly Yugoslavia, since there has been more interest there, we have determined that the joint venture investments made by United States firms are insurable under our standard equity insurance contract. For example, with respect to inconvertibility of currency, the type of protection that OPIC gives is against the worsening of investment laws, regulations or practices. This is as true in Yugoslavia as it is in any other country. Convertibility *per se* is not insured; hence, if the joint venture does not earn sufficient foreign exchange for remission of profits or repatriation of capital, under the laws that existed when the investment was made, we do not pay under the insurance contract. We only pay if the laws or practices have changed for the worse. If the "retention quota," for example, is reduced or abolished, then there may be a claim under insurance for inconvertibility of currency.

Regarding expropriation insurance, some people not familiar with our contract might say, "How can you insure against expropriation in a country where there is no ownership of property?" This analysis disregards the fact that OPIC insurance is not insurance against loss of property rights. It is against loss of rights acquired

as a result of the investment. And there are rights that are acquired, obviously, in joint ventures, and therefore if the government takes some act, or condones some act, which causes the investor to lose his fundamental rights acquired under the joint venture agreement, then that is a compensable event under the OPIC insurance.

Similarly, the war insurance that OPIC provides in Yugoslavia is basically what OPIC provides elsewhere. If the tangible property being used by the joint venture is damaged by war, revolution or insurrection, OPIC pays the United States investor's share in the enterprise that is conducting the activities. In other words, the loss occasioned by the act of war, revolution or insurrection is divided, part of which is uninsured, that is, the interest of the Yugoslav partner. The interest that is owned by the foreign United States investor is then compensated for.

Before describing our Finance Program I would like to note that we insure more than just joint venture participations. We also insure loans to projects in Yugoslavia and Romania. This insurance covers bank and other lending to these projects. Basically the coverage provides that if a scheduled loan payment is not paid because of expropriation or war, revolution or insurrection, OPIC will pay the scheduled payment when it comes due. We will then take an assignment of the note and look to the project to be repaid.

Another type of insurance that we have had for a few years is insurance of construction and other service contracts. Normally, these require that there be an arbitration provision in the contract between the United States firm and the host government. If the insured contractor obtains an award under the arbitration provisions and the host government refuses to pay the award, OPIC will pay up to 90 percent. We have not as yet used this type of contract in Yugoslavia or Romania, but it would be possible.

In the Finance Program, we have two basic services. The direct loan program, which is a small loan program, provides up to \$2 million for a project. These loans are not guaranteed by the sponsor nor by the host government. In other words, OPIC looks to the project to repay the loan. This is also true of the investment guarantee, OPIC's other financial service, although we have more capacity in that program and can therefore provide up to \$20 million in a guarantee for loans in Yugoslavia or Romania or in the other countries in which OPIC operates.

Now, obviously, since we have to look to the project to pay us back, the project must be technically and financially viable. Feasibility studies must confirm availability of raw materials, market, labor, management, machinery, etc., and projected cash flow must show comfortable debt service. Another OPIC finance department policy is that United States citizens or firms must have at least 25 percent interest in the equity of the project.

OPIC also requires that the host country have found the project compatible with its objectives. The project must be new or an expansion of an existing enterprise. Other criteria include the fact that sponsors of the project must have a

record of successful operations in the business of the proposed project, and that there be no "rich" third-country procurement.

OPIC will finance up to 50 percent of the project's total cost. Normally it is less than that because we usually have other lenders alongside us—private banks, the Export-Import Bank, or the International Finance Corporation of the World Bank group.